

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**RON ALLEN HUNTER, JR.,  
Plaintiff,**

**V.**

**Z. WAGGONER, C.O.,  
Defendant.**

**C.A. No. 22-78 Erie**

**District Judge Susan Paradise Baxter**  
**Chief Magistrate Judge Richard Lanzillo**

## MEMORANDUM ORDER

Plaintiff Ron Allen Hunter, Jr., an inmate currently incarcerated at the Erie County Prison in Erie, Pennsylvania, initiated this *pro se* civil rights action on February 28, 2022, by filing a motion to proceed *in forma pauperis* (“ifp motion”), accompanied by a *pro se* complaint against three Defendants: Dr. Barrett, Dr. Kang, and Z. Waggoner.<sup>1</sup> This matter was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On June 1, 2023, Plaintiff filed an amended complaint against Defendant Waggoner only, which is the operative pleading in this case. In his amended complaint Plaintiff alleges that Defendant Waggoner used excessive force against him by unnecessarily deploying oleoresin capsicum (“OC”) spray on him in violation of Plaintiff’s Fourteenth Amendment rights.

After the parties completed discovery, Defendant Waggoner filed a motion for summary

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Plaintiff's claims against Defendants Barrett and Kang were subsequently dismissed by Memorandum Order dated December 21, 2022 [ECF No. 58]. The dismissal was without prejudice to Plaintiff's right to file an amendment complaint reasserting his claims against said Defendants by January 10, 2023; however, Plaintiff failed to do so and, as a result, the dismissal of Plaintiff's claims against these Defendants was converted to a dismissal with prejudice.

judgment based on, among other things, Plaintiff's failure to exhaust his administrative remedies [ECF No. 123]. The motion was fully briefed by the parties.

On August 8, 2024, Chief Magistrate Judge Lanzillo issued a Report and Recommendation ("R&R") recommending that Defendant Waggoner's motion be granted and that judgment be entered in favor of Defendant Waggoner and against Plaintiff on the sole remaining claim in this case [ECF No. 182]. Objections to the R&R were due to be filed by August 26, 2024; however, no timely objections have been received by the Court.

After *de novo* review of the complaint and documents in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 28th day of August, 2024;

IT IS HEREBY ORDERED that Defendant Waggoner's motion for summary judgment [ECF No. 123] is GRANTED and judgment is entered in favor of Defendant Waggoner and against Plaintiff on Plaintiff's Fourteenth Amendment excessive use of force claim, which is the sole remaining claim in this case. The report and recommendation of Chief Magistrate Judge Lanzillo, issued August 8, 2024 [ECF No. 182], is adopted as the opinion of the court.

The Clerk is directed to mark this case CLOSED.

  
SUSAN PARADISE BAXTER  
United States District Judge

cc: The Honorable Richard A. Lanzillo  
Chief U.S. Magistrate Judge

all parties of record